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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. DANIEL ARCE, Defendant and Appellant.	B256285 (Los Angeles County Super. Ct. No. BA400869)

APPEAL from a judgment of the Superior Court of Los Angeles County, Edmund Wilcox Clarke, Jr., Judge. Affirmed.

Ava R. Stralla, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey and Michael J. Wise, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Daniel Arce appeals his conviction for voluntary manslaughter. The trial court sentenced him to a term of 13 years in prison. Arce contends the court erred by excluding defense evidence and failing to properly instruct the jury. Discerning no reversible error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts*

a. *People's evidence*

Viewing the record in accordance with the usual rules governing appellate review, the evidence relevant to the issues presented on appeal was as follows.

(i) *Events leading up to the stabbing*

Dalilia Mendez and the victim, Bernardo Lopez, known as "Bear," dated and lived together for over two years in an apartment they shared with Mendez's daughters. They ended their relationship in early July 2012, and Lopez moved out of the apartment. However, they stayed in contact and attempted to "work things out."

Mendez and Arce met at work and engaged in a sexual relationship for several weeks in July 2012. Mendez allowed Arce to stay at her apartment until space became available for him at a sober living home. After Arce moved in with Mendez, he became hostile, jealous and possessive. They argued frequently, and Arce threatened Mendez on several occasions. Mendez told Arce he had to move out, and threatened to move out herself. Once, he choked her and threatened to stab her in her sleep. In response, Mendez slashed her own wrists with a pair of scissors, took an over-the-counter medicine to make her drowsy, and told him to " 'do what you got to do.' " When Mendez was groggy, Arce raped her.

Arce subsequently left a diamond ring in a heart-shaped arrangement for Mendez in her bedroom. When she declined to accept it he became angry and insisted that she accept it. Afterwards, she secretly left a barbeque they were attending and met Lopez. She and Lopez spent the night together at a park, talking. Lopez said he wanted to move back in with Mendez. She told him they could resume their relationship once Arce had

moved out. While Mendez was with Lopez, Arce left her multiple voice mail messages, some of which were threatening. In one he stated he would "snap her neck" when she got home.

(ii) *The stabbing*

On the evening of July 28, 2012, Lopez called and said he wanted to come over and check that Mendez and her daughters were okay. Also that evening, Mendez told Arce that she had told her "homeboys" and Lopez that he had raped and choked her. Arce became angry, but Mendez said the homeboys did not plan on doing anything in response to her disclosures.

At approximately 11:20 that night, Lopez arrived at the apartment and went into one of the bedrooms. He asked if Arce was the guy who had hit Mendez, expressed anger that Arce was smoking in the house, and told Mendez to tell Arce to leave. Mendez told Arce to leave. Arce replied, "Tell that mother fucker . . . I ain't going anywhere, and if he doesn't like it, we can take it outside." Lopez said he would make Arce leave. Arce packed his things.

Lopez stated it had been a mistake for him to come and announced he was leaving. En route to the front door, Lopez passed Arce in the dining room. Arce punched or stabbed Lopez in the chest. Lopez, who was unarmed, punched back. Mendez's daughter saw a curved "pizza knife," usually kept in one of the kitchen drawers but on the dining table that night, protruding from one of Arce's sleeves. Lopez began holding his neck and bleeding profusely. Mendez unsuccessfully tried to stop the fight. The fight moved to the outside staircase, and Lopez pushed Arce down the stairs. Arce got up and yelled, " 'Come on, let's do this. Let's finish it right here and now.' " The men struggled at the bottom of the stairs. Lopez held his neck or chest area and limped away.

Arce and Mendez went back into the apartment. Arce, who was still holding the knife, told Mendez, " 'I stinged him,' " and asked her to go check on Lopez. He also said, " 'Fuck that shit, I'm going to stab him again.' " Mendez attempted to call 911, and ran outside and yelled for help. Arce headed outside after Lopez. A neighbor saw Lopez

running away and Arce chasing him with a knife. Mendez and one of her daughters restrained Arce, who said, " 'Get off me. I want to see what I did.' " Mendez's daughter kicked Arce to make him release the knife. Lopez collapsed on the ground, saying " 'Hospital. Hospital.' " Arce broke away from Mendez and performed CPR on Lopez. Police officers arrived on the scene shortly thereafter. Mendez told them that Arce had stabbed Lopez. Arce, who was still attempting CPR, stated, " 'I did it. I stabbed him.' "

Lopez died before he could be transported to a hospital. An autopsy disclosed that he had suffered over 10 stab wounds. Four wounds were fatal: one punctured the heart sac; another punctured the lung, diaphragm, and liver; another pierced the lung; and another pierced the neck and trachea. The six nonfatal wounds were to the chest, abdomen, arm, and jaw.

b. *Defense evidence*

Arce testified in his own behalf. He denied raping and threatening Mendez, but admitted choking her after she instigated a fight. The morning after Mendez spent the night with Lopez, Arce overheard her saying that her homeboys wanted to come jump Arce. That afternoon Arce used a knife to open a packaged drink he made for Mendez, and left the knife in the dining room. He told Mendez he was moving out, and began packing his things and arranging for another place to stay. He sent text messages to his sobriety sponsor and the supervisor of a sober living home, stating, inter alia, that Mendez's "homeboys from Hazard" were going "to come jump" him, but he was "ready to strike and kill"; and Mendez was "a snake" and he was "ready for anything that comes my way."

Arce recounted the stabbing as follows. Lopez arrived at the apartment, said "Who the fuck are you" when Arce answered the door, and introduced himself as "Lil Bear from Hazard." Outside, and out of Lopez's presence, Mendez told Arce that Lopez

had heard Arce hit her and wanted to "kick [his] ass." Lopez was larger than Arce.[1] Arce told Mendez he would leave, but had nowhere to go that evening, as it was already midnight. He called Mendez's son-in-law, who said Arce could sleep in his wife's car. When Arce walked back into the apartment to get his belongings, Lopez suddenly swung at him repeatedly. Arce saw the knife he had left on the table earlier and grabbed it. Frightened, he stabbed Lopez, who began bleeding from the neck. Arce tried to leave but Lopez grabbed him and continued punching. Lopez threw Arce down the stairs, fracturing Arce's forearm. Lopez came after him and continued swinging. Mendez separated the men. Lopez walked away. Arce picked up the knife, informed Mendez he had stabbed Lopez, and told her to call 911 and make sure Lopez was okay. Mendez restrained Arce when he tried to check on Lopez, and Mendez's daughter hit Arce. When Arce broke free he performed CPR on Lopez. He did not intend to kill Lopez, but was afraid and stabbed him in self-defense.

2. *Procedure*

Trial was by jury. Arce was convicted of voluntary manslaughter, with personal use of a dangerous and deadly weapon, a knife.[2] (Pen. Code, §§ 192, 12022, subd. (b)(1).)[3] Arce admitted suffering a prior conviction and serving a prior prison term within the meaning of section 667.5, subdivision (b). The trial court sentenced Arce to 11 years on the manslaughter charge, plus one year for the deadly weapon enhancement, plus one year for the section 667.5 prior prison term enhancement, for a total of 13 years. It imposed a restitution fine, a suspended parole restitution fine, a court operations assessment, and a criminal conviction assessment. Arce appeals.

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[1] Arce was 5'2" tall and weighed approximately 130 pounds. Lopez was 5'6" and weighed 172 pounds.

[2] The jury acquitted Arce of murder.

[3] All further undesignated statutory references are to the Penal Code.

DISCUSSION

1. *Exclusion of Arce's out-of-court statement was harmless.*

a. *Additional facts*

Mendez's daughter's boyfriend, Alfredo Antonio, witnessed the fight and aftermath. During his direct examination the prosecutor elicited a description of the stabbing, including that when Lopez limped away, Mendez held Arce down because it appeared he was trying to get to Lopez. Arce said he just wanted to see what he had done, and administered CPR as Lopez lay dying in Mendez's lap.

Defense counsel cross-examined Antonio regarding the sequence of events. After eliciting that Mendez had held Arce down, counsel asked: "isn't it true while [Dalilia] was holding Danny down, he says 'I'm trying to save him'?" The prosecutor objected on hearsay grounds. Defense counsel averred the testimony was admissible under Evidence Code section 1250 (statement of declarant's then-existing mental or physical state). The trial court questioned whether the evidence was relevant. Counsel explained he expected Antonio to state that Arce said, " 'I'm trying to save him. I want to help out.' " Thus, the evidence would show Arce was not trying to get to Lopez to continue the attack, but to assist him, which was probative on the issues of his intent and state of mind and tended to show the absence of an intent to kill. After discussing the issue with the parties at some length, the trial court excluded the evidence because (1) it was hearsay; (2) Arce's state of mind after the stabbing was irrelevant; (3) the fact that Arce performed CPR was already in evidence; and (4) the statement was self-serving, had the potential to distract the jury, and lacked probative value under Evidence Code section 352. The court reasoned: "I just don't find it persuasive that what someone says after his actions prove what he was thinking when he did the actions."

b. *Discussion*

Arce contends that the trial court abused its discretion by excluding the evidence, thereby infringing his rights to a fair trial, due process, and to present a defense. He urges the statement should not have been excluded under Evidence Code section 352, and was

admissible over a hearsay exception as a spontaneous statement (Evid. Code, § 1240), to explain conduct (Evid. Code, § 1241), and pursuant to the rule of completeness (Evid. Code, § 356). He also avers that admission was required as a matter of due process. We conclude any purported error was harmless.

Only relevant evidence is admissible. (Evid. Code, §§ 350, 351.) "Relevant evidence" means evidence, including evidence relevant to witness credibility, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. (Evid. Code, § 210; *People v. Mills* (2010) 48 Cal.4th 158, 193; *People v. Lee* (2011) 51 Cal.4th 620, 642.) Relevant evidence may be excluded "if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Evid. Code, § 352; *Lee*, at p. 643; *People v. Waidla* (2000) 22 Cal.4th 690, 724.) We apply the abuse of discretion standard to a trial court's rulings on the admissibility of evidence, including those turning on the relevance or probative value of the evidence in question. (*People v. Fuiava* (2012) 53 Cal.4th 622, 667-668; *People v. Scott* (2011) 52 Cal.4th 452, 491; *People v. Hamilton* (2009) 45 Cal.4th 863, 929-930.) The erroneous exclusion of evidence requires reversal only if it is reasonably probable that appellant would have obtained a more favorable result had the evidence been allowed. (Evid. Code, § 354; *People v. Richardson* (2008) 43 Cal.4th 959, 1001.)

Arce is correct that one of the trial court's reasons for excluding the evidence was erroneous. Arce's actions immediately after the stabbing were relevant. Arce was charged with murder. The jury was instructed on first degree murder, and the prosecutor argued the evidence supported a finding of premeditation and deliberation. Evidence of Arce's behavior after the stabbing was therefore potentially probative on the issue of premeditation. (See, e.g., *People v. Boatman* (2013) 221 Cal.App.4th 1253, 1267 [evidence that the defendant was horrified and distraught about what he had done and, inter alia, attempted to resuscitate the victim "strongly suggest[ed] *a lack* of a plan to

kill"]; *People v. Koontz* (2002) 27 Cal.4th 1041, 1081-1082 [fact defendant prevented a witness from obtaining medical care for the victim suggested premeditation and deliberation]; *People v. Sanchez* (1995) 12 Cal.4th 1, 34, disapproved on another point in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22 [fact attackers pursued gravely wounded victim when he attempted to flee supported a finding of premeditation and deliberation].) Here, there was evidence from which the jury could have concluded Arce intended to continue the attack after the initial stabbing. Among other things, while in the kitchen after the stabbing, Arce said " 'Fuck that shit, I'm going to stab him again.' " Arce angrily yelled, " 'Come on, let's do this. Let's finish it right here and now' " after being pushed down the stairs, before Mendez restrained him. There was also evidence that as Lopez was "trying to get away," Arce was struggling with Mendez, "trying to get" him. Arce was entitled to rebut the inference he was going after Lopez to continue the attack. Contrary to the trial court's concern, there is no basis to believe this brief and straightforward evidence would have distracted the jury.

Arce also argues the evidence was not barred by the hearsay rule. (Evid. Code, § 1200.) But we need not consider whether the evidence was correctly excluded as hearsay because, on the facts here, any error was harmless under any standard.[4] (Evid. Code, § 354; *People v. Richardson*, *supra*, 43 Cal.4th at p. 1001; *Chapman v. California* (1967) 386 U.S. 18; *People v. Watson* (1956) 46 Cal.2d 818, 836.) Arce was not ultimately convicted of first degree murder; he was convicted of voluntary manslaughter. As there was no finding of premeditation and deliberation, exclusion was not prejudicial on that score. His conduct immediately after the stabbing was far less probative on the question of whether he acted in self-defense or imperfect self-defense. Contrary to Arce's contention, the evidence was not critical to these theories.

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[4] Likewise, we need not reach the People's arguments that Arce has forfeited his due process argument and his claims that the evidence was admissible pursuant to Evidence Code sections 1240 or 1241.

Moreover, it was undisputed that Arce did, in fact, perform CPR in an attempt to revive Lopez once Arce broke away from Mendez. He also put pressure on Lopez's neck wound and attempted mouth-to-mouth resuscitation, and asked Mendez to check to make sure Lopez was "okay." He stayed at the scene until police arrived and admitted stabbing Lopez. This evidence more persuasively rebutted the inference he was trying to continue the attack on Lopez than his statement would have.[5] In short, it is clear beyond a reasonable doubt that he would not have obtained a more favorable result had Antonio been allowed to testify to the statement.

2. *Purported instructional error*

A killing may be reduced from murder to voluntary manslaughter if the defendant kills in the unreasonable, but good faith, belief that deadly force is necessary in self-defense. (*People v. Beltran* (2013) 56 Cal.4th 935, 942, 951.) "Perfect" self-defense, on the other hand, is a complete defense to both murder and manslaughter. (§ 197, subd. 1; *People v. Randle* (2005) 35 Cal.4th 987, 994, overruled on other grounds in *People v. Chun* (2009) 45 Cal.4th 1172, 1201.)

Arce's jury was instructed on murder, justifiable homicide in self-defense, and voluntary manslaughter under both heat of passion/provocation and imperfect self-defense theories. As to self-defense, the trial court instructed with the standard version of CALCRIM No. 505. It provided in pertinent part: "The defendant is *not guilty of murder* if he was justified in killing someone in self-defense. The defendant acted in lawful self-

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[5] The People argue that exclusion of the evidence was harmless and the issue is moot because "the jury did hear about the statement in the form of a question from trial defense counsel" and counsel "was able to get the statement in front of the jury, whether they were allowed to legally consider it or not, and it obviously served its purpose." This argument ignores that the jury was instructed, "Nothing that the attorneys say is evidence," and "The attorneys' questions are significant only if they helped you to understand the witnesses' answers. Do not assume that something is true just because one of the attorneys asked a question" about it. We cannot properly predicate our analysis on the theory that the jury disregarded the trial court's instructions.

defense if: [¶] 1. The defendant reasonably believed that he was in imminent danger of being killed or suffering great bodily injury. [¶] 2. The defendant reasonably believed that the immediate use of deadly force was necessary to defend against that danger. [¶] AND [¶] 3. The defendant used no more force than was reasonably necessary to defend against that danger. [¶] . . . [¶] The People have the burden of proving beyond a reasonable doubt that the killing was not justified. If the People have not met this burden, you must find the defendant *not guilty of murder*." (Italics added.) Although the pattern instruction gives the option of filling in the blanks with "murder/ [or] manslaughter" in the portions of the instruction italicized above, the trial court here listed only murder, not manslaughter.

Arce contends the omission of the word "manslaughter" in CALCRIM No. 505 was reversible error. He argues that the omission would have misled the jury into believing that self-defense was a complete defense to murder, but not to manslaughter. He posits that if the jury found he acted in self-defense, the instructions required a guilty verdict on voluntary manslaughter. Thus, he argues, the instructional error violated his state and federal rights to present a defense. We disagree.

In a criminal case a trial court must instruct sua sponte on the general principles of law relevant to the issues raised by the evidence. (*People v. Diaz* (2015) 60 Cal.4th 1176, 1189; *People v. Moye* (2009) 47 Cal.4th 537, 548.) " 'The general principles of law governing the case are those principles closely and openly connected with the facts before the court, and which are necessary for the jury's understanding of the case.' " (*People v. Diaz*, at p. 1189.) Whether a jury instruction is correct and adequate is a question of law, which we review de novo. (*People v. Jandres* (2014) 226 Cal.App.4th 340, 358.) When reviewing a purportedly ambiguous jury instruction, we ask whether there is a reasonable likelihood the jury misconstrued or misapplied it. (*People v. Harrison* (2005) 35 Cal.4th 208, 251-252; *People v. Palmer* (2005) 133 Cal.App.4th 1141, 1156.) We consider the instructions as a whole and assume that the jurors are intelligent persons capable of

understanding and correlating all instructions given. (*People v. Holmes* (2007) 153 Cal.App.4th 539, 545-546.)

The omission of the word "manslaughter" from CALCRIM No. 505 could not have misled the jury here. As Arce acknowledges, the jury was also instructed with CALCRIM No. 571, which set forth the legal principles relevant to voluntary manslaughter on an imperfect self-defense theory. That instruction provided, in pertinent part: "A killing that would otherwise be murder is reduced to voluntary manslaughter if the defendant killed a person because he acted in imperfect self-defense. [¶] *If you conclude the defendant acted in complete self-defense, his action was lawful and you must find him not guilty of any crime*." (Italics added.)

Given the clear and unambiguous statement in CALCRIM No. 571 – the instruction specifically covering voluntary manslaughter on an imperfect self-defense theory – the jury cannot have misconstrued the relevant principles. "An instruction can only be found to be ambiguous or misleading if, in the context of the entire charge, there is a reasonable likelihood that the jury misconstrued or misapplied its words." (*People v. Campos* (2007) 156 Cal.App.4th 1228, 1237.) Thus, a single jury instruction that alone could be confusing may not constitute error if an accompanying instruction clarifies any potential confusion. (See *People v. Castillo* (1997) 16 Cal.4th 1009, 1016; *People v. Gana* (2015) 236 Cal.App.4th 598, 607-608.) Such is the case here. The instructions given, considered as a whole, made clear that self-defense is a defense to both murder and manslaughter.[6]

Arce attempts to characterize CALCRIM Nos. 571 and 505 as contradictory, and points to authority holding that where it is impossible to determine which of one or more conflicting instructions the jury followed, reversal is required. But there is no conflict between CALCRIM Nos. 571 and 505. CALCRIM No. 505 states that self-defense is a

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6 In light of our conclusion, we do not reach the People's argument that Arce's claim is forfeited.

complete defense to murder, but it does not state, or imply, that the converse is true in regard to voluntary manslaughter. CALCRIM No. 505 says self-defense is a complete defense to murder; CALCRIM No. 571 says it is a complete defense to manslaughter. Read together, the instructions are complete and adequate. There is no inconsistency between the two, and the instructions as a whole were not misleading or erroneous.[7]

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[7] Arce points out that during deliberations, the jury sent a note to the court, asking: "As stated in the elements of 2nd degree murder, what is the definition of 'he killed without lawful excuse'? [¶] Additionally, does this element relate to imperfect self defense." The trial court responded: "Please review all of the instructions. No. 500 in particular may be helpful in appreciating the impact of a lawful excuse. No. 505 discusses complete self-defense. No. 571 explains that imperfect self-defense is not a complete defense." The jury's note and the court's response have no bearing on the question of whether the challenged instructions were adequate and correct.

Arce also argues that after the verdict was rendered, courtroom staff noticed that some of the written instructions left in the jury room contained handwritten notes, apparently placed there by the jurors during deliberations. He avers that these notations "provide[ ] an insight into the deliberation process" and show the jury found him guilty on an imperfect self-defense theory. Even if we could properly consider such materials in contravention of Evidence Code section 1150, because we have determined the instructions were not misleading, these materials are irrelevant.

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

EDMON, P. J.

KITCHING, J.